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Supreme Court of the United States

October Term, 1957

No. [redacted] 74

HENRY J. MILLS and
OSMOND J. LITOLFF,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 1035

HENRY J. MILLS and
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STATE OF LOUISIANA,
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MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Memorandum in Support of Petition for a Writ of Certiorari to the Supreme Court of Louisiana

TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

MAY IT PLEASE YOUR HONORS:

Since the filing of the petition for a writ of certiorari to the Supreme Court of the State of Louisiana in this matter, your Honors have decided the case of Milton Knapp, petitioner, vs. Mitchell D. Schweitzer, Judge of the Court of

General Sessions, and Frank S. Hogan, District Attorney of the City of New York, No. 189 (October Term, 1957) Vol. 78, No. 17, July 15, 1958, p. 1302 Supreme Court Reporter.

While your Honors in that case denied the application of petitioner and held that a witness who was granted immunity by a State against state prosecution may be compelled to testify in a state proceeding and cannot successfully assert the privilege against self-incrimination under the Fifth Amendment, and held that the sole purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal government to compel incriminating testimony, with a view to enabling that same government to convict a man out of his own mouth, your Honors specifically stated:

> "Of course the Federal Government may not take advantage of this recognition of the States' autonomy in order to evade the Bill of Rights. If a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. Such testimony is barred in a federal prosecution, see Byars v. United States, 273 U.S. 28. Whether, in a case of such collaboration between state and federal officers, the defendant could successfully assert his privilege in the state proceeding, we need not now decide, for the record before us is barren of evidence that the State was used as an instrument of federal prosecution or investigation. Petitioner's assertion that a federal prosecuting attorney announced his intention of cooperating with

> state officials in the prosecution of cases in a general field of criminal law presents a situation devoid of legal significance as a joint state and federal endeavor."

We respectfully submit that the petition filed by the present petitioners definitely and positively shows that one of the Federal officers, to-wit: the United States Attorney for the Eastern District of Louisiana, is a party to the compulsion of testimony by a State agency, viz: the Grand Jury of the Parish of Orleans, out of the mouths of petitioners, which could be used against petitioners in a Federal prosecution, which might result against petitioners for violating a Federal statute or statutes.

The record herein shows that the District Attorney of the Parish of Orleans, the legal adviser of the Grand Jury for the Parish of Orleans, stipulated and agreed, among other things, that certain facts should be considered as evidence in lieu of the taking of testimony on the hearing of the rule for contempt before the State Court.

Among the facts stipulated and agreed upon as evidence (See par. 7 of Stipulation "C" regarding petitioner Osmond J. Litolff, p. 53 of the printed record of the Supreme Court of Louisiana, and see par. 7 of the Stipulation as to petitioner Henry J. Mills, p. 46 of the printed record of the Supreme Court of the State of Louisiana) was the fact that there existed and did exist at the time the said Grand Jury hearing was being held — cooperation and collaboration between the District Attorney for the Parish of Orleans: Hon. Leon D Hubert, Jr., and the United States Attorney for the Eastern District of Louisiana, and the Internal Revenue

Service of the United States of America, in reference to members of the New Orleans Police Department regarding public bribery and income tax evasion, and that Hon. Leon D. Hubert, Jr., District Attorney of the Parish of Orleans, had held conferences with the United States Attorney for the Eastern District of Louisiana regarding public bribery on the part of certain members of the New Orleans Police Department, and income tax evasions, felonies under the laws of the United States of America and the State of Louisiana.

The record also shows that it was further stipulated and agreed that petitioners were then under investigation by agents of the United States Department of Internal Revenue Service and other United States officials concerning petitioners' income tax returns for the years 1948 to 1951, inclusive, and that petitioners had been required by investigating officers of the United States Internal Revenue Service to sign waivers against prescription of, and concerning, petitioners' income tax returns for the years 1948 to 1951, inclusive, so as to afford such investigating officers of the United States Internal Revenue Service and other officials of the United States government an opportunity to proceed against petitioners for any violation of the income tax laws or other Federal statutes, which said investigating officers would claim petitioners had violated, the statutory period of limitation of criminal prosecutions for offenses under the United States Internal Revenue laws (6 years) — (U. S. Code, Title 26, p. 6531) not having elapsed regarding petitioners' income tax returns.

We respectfully contend that, in view of the above, your Honors' decision in Knapp vs. Schweitzer, supra, bars the

use of such testimony in a Federal prosecution. (See Byars v. U.S. 273, U.S. 28).

Petitioners, therefore, respectfully claim the protection of the Fifth Amendment against being compelled to incriminate themselves before the Grand Jury of the Parish of Orleans, State of Louisiana, and claim the benefit of this Amendment against the punishment for contempt inflicted upon them in the State Court, and respectfully petition this Honorable Court to set aside and annul the judgment of the Criminal District Court of the Parish of Orleans, State of Louisiana, finding them guilty of contempt of Court.

Respectfully submitted,

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CERTIFICATE

I certify that copies of the foregoing brief have been served upon opposing counsel of record by placing the same properly addressed in the United States mail with adequate postage affixed thereto.